

Message Text

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ORIGIN L-03

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FM SECSTATE WASHDC
TO AMEMBASSY PANAMA IMMEDIATE

C O N F I D E N T I A L STATE 195074

E.O. 11652: GDS

TAGS: PBOF, PN

SUBJECT: TREATY NEGOTIATIONS: TREATY DRAFTS

REFS: A. PANAMA 5787, B. PANAMA 5757

1. FOLLOWING ARE CHANGES WE REQUEST IN DRAFT AGREED TEXTS
CABLED IN REFTEL A, WITH EXPLANATORY COMMENTS. ARTICLE
NUMBERING FOLLOWS THAT OF AGREED NEW DRAFT TEXT.

A) ARTICLE II, PREAMBULAR LANGUAGE: CHANGE "AGREED"
TO "AGREE". EXPLANATION: EDITORIAL CHANGE ONLY. CHANGE
SPELLING OF "SUPERCEDES" TO "SUPERSEDES".

B) AGREED MINUTE TO ARTICLE II: WE ARE CURRENTLY
COMPILING LISTS OF TREATIES AND AGREEMENTS FOR PARAGRAPHS
1 AND 2, AND WILL CABLE THEM TO YOU AS SOON AS READY.
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AT SAME TIME WE MAY WISH TO PROPOSE MODIFICATIONS TO SUB-
PARAGRAPHS C OF ARTICLE II AND THE AGREED MINUTE.

C) ARTICLE III: O.K.

D) ARTICLE IV, PARAGRAPH 1: DELETE "EXPEDITIOUS".
ALTERNATIVE FALLBACK: REPLACE "EXPEDITIOUS" WITH
"EFFICIENT" OR "ORDERLY". EXPLANATION: WE REGARD THIS AS
A KEY CHANGE. USE OF WORD "EXPEDITIOUS" IS UNDESIRABLE

BECAUSE OF ITS SPECIAL CONNOTATION IN NEUTRALITY TREATY. IT IMPOSES A GREATER OBLIGATION REGARDING MOVEMENT OF VESSELS THAN WE ARE PREPARED TO TAKE IN CONTEXT OF THIS ARTICLE.

E) ARTICLE IV, PARAGRAPH 2, PREAMBULAR LANGUAGE: AFTER "AMERICA", DELETE THE WORD "FOLLOWING", AND AFTER "RESPONSIBILITIES" ADD A COMMA AND THE WORD "INCLUDING". EXPLANATION: YOUR DRAFT AGREED TEXT WOULD APPEAR TO MAKE A SIGNIFICANT SUBSTANTIVE CHANGE IN THE ORIGINAL U.S. TEXT BY CONVERTING AN ILLUSTRATIVE LIST OF RIGHTS INTO AN EXCLUSIVE LIST OF RIGHTS. WE BELIEVE IT IS IMPORTANT TO PRESERVE THE BROADER GRANT OF RIGHTS CONTAINED IN THE ORIGINAL U.S. PROPOSAL, AND THE REQUESTED CHANGES ACCOMPLISH THIS WITH A MINIMUM OF CHANGE TO THE WORDING OF YOUR AGREED TEXT.

F) ARTICLE IV, PARAGRAPH 2(A): INSERT "WITHOUT CHARGE" AFTER "PURPOSES". EXPLANATION: WE REGARD INSERTION OF THESE WORDS AS IMPORTANT. WHILE POINT COULD BE COVERED FULLY IN IMPLEMENTING AGREEMENT, WE THINK IT IS MOST DESIRABLE TO HAVE IT LOCKED UP IN TEXT OF TREATY ITSELF.

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G) ARTICLE IV, PARAGRAPH 2(B): CHANGE "ALTERNATIONS" TO "ALTERATIONS". EXPLANATION: CORRECTION OF TYPOGRAPHICAL ERROR.

H) ARTICLE IV, PARAGRAPHS 2(C) AND (G): DELETE WORDS "IN COOPERATION WITH THE REPUBLIC OF PANAMA". ALTERNATIVE FALLBACK: CHANGE "COOPERATION" TO "CONSULTATION". EXPLANATION: WE REGARD THIS CHANGE AS VERY IMPORTANT. LANGUAGE "IN COOPERATION WITH THE REPUBLIC OF PANAMA" IS VAGUE AS TO SUBSTANTIVE EFFECT AND COULD IMPLY THAT AN ELEMENT OF CONCURRENCE BY PANAMA IN U.S. ACTION IS REQUIRED. WE RECOGNIZE THAT PHRASE WITH WORD "COOPERATION" WAS AGREED BY NEGOTIATORS PRIOR TO PANAMA DEPARTURE. NONETHELESS, ON REFLECTION, WE FEEL WE MUST SEEK TO MODIFY IT. IN MOVING TO CHANGE THIS LANGUAGE, YOU MAY WISH TO DRAW UPON FACT THAT PANAMA HAS ALSO REQUESTED CHANGE IN LANGUAGE AGREED TO BY CHIEF NEGOTIATORS (PARAGRAPH 3 REFTEL A, SEE SUBPARAGRAPH Q BELOW), WHICH WE ARE PREPARED TO ACCEPT.

I) ARTICLE IV, PARAGRAPH 2(D): REQUEST YOU GO BACK TO ORIGINAL U.S. LANGUAGE READING FROM WORD "RETAIN" AS FOLLOWS: "PANAMA CANAL TOLLS AND OTHER CHARGES AND TO

ESTABLISH AND MODIFY METHODS OF THEIR ASSESSMENT". THIS CHANGE IS ALSO A KEY ONE. THE LANGUAGE AS YOU HAVE AGREED RESTRICTS COLLECTIONS OF TOLLS AND OTHER CHARGES TO USE

OF THE PANAMA CANAL; ORIGINAL U.S. LANGUAGE WAS NOT RESTRICTED. IT IS IMPORTANT TO MAINTAIN GENERAL RIGHT AS THERE ARE A NUMBER OF TOLLS AND OTHER CHARGES IMPOSED FOR SERVICES NOT INVOLVING USE OF THE PANAMA CANAL ITSELF.

J) ARTICLE IV, PARAGRAPH 3(A): DELETE COMMA AFTER "PANAMANIAN NATIONALS". EXPLANATION: COMMA WHICH HAS BEEN ADDED APPEARS AS A SUBSTANTIVE MATTER TO GIVE PANAMA CONFIDENTIAL

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A RIGHT TO PROPOSE NATIONALS OF U.S. AS WELL AS PANAMANIAN NATIONALS TO SERVE ON BOARD AND THEREFORE SHOULD BE DROPPED.

K) ARTICLE IV, PARAGRAPH 3(D): CHANGE "DEPUTY COMMISSIONER" TO READ "DEPUTY ADMINISTRATOR". EXPLANATION: REGARDLESS OF NAME OF NEW PANAMA ENTITY, IT IS TO BE HEADED BY A PERSON DESIGNATED AS ADMINISTRATOR, AND HIS DEPUTY WOULD THEREFORE BE DEPUTY ADMINISTRATOR.

L) ARTICLE IV, PARAGRAPH 4: CHANGE "A DESCRIPTION" TO READ "AN ILLUSTRATIVE LISTING". EXPLANATION: WE REGARD THIS CHANGE AS VERY IMPORTANT. WE WANT TO MAKE CLEAR THAT THE LISTING OF THE ACTIVITIES OF THE PANAMA CANAL COMMISSION SET OUT AT ANNEX B IS NOT AN ALL-INCLUSIVE LIST BUT IS ONLY A REPRESENTATIVE SAMPLE. WE DO NOT WANT ANNEX B SUBSTANTIVELY TO IMPOSE RESTRICTIONS ON THE ACTIVITIES OF THE PANAMA CANAL COMMISSION. PROBLEM IS CORRECTED BY AMKING CLEAR THAT THE LIST IS ILLUSTRATIVE ONLY.

M) ARTICLE IV, PARAGRAPH 5: DELETE COMMA BETWEEN "GENERAL TOLLS" AND "POLICY". EXPLANATION: THIS MAY ONLY BE A TYPOGRAPHICAL ERROR. IT SHOULD BE DELETED BECAUSE IT HAS THE EFFECT OF MAKING A SUBSTANTIVE CHANGE WHICH IS NOT INTENDED. CHANGE "FULL CONSIDERATIONS" TO "FULL CONSIDERATION". EXPLANATION: WE ASSUME THIS IS A TYPO. IN PARAGRAPH 6, AFTER "ASSUMPTION BY THE REPUBLIC OF PANAMA" DELETE THE COMMA. EXPLANATION: WE ASSUME THIS IS A TYPO.

N) ARTICLE IV, PARAGRAPH 7: CHANGE "PERSUANT" TO "PURSUANT". EXPLANATION: TYPO.
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O) ARTICLE V, PARAGRAPH 2: ADD A COMMA BETWEEN "STATION" AND "TRAIN". EXPLANATION TYPO.

P) ARTICLE V, PARAGRAPH 2: REINSERT "AND TO USE AREAS AND INSTALLATIONS THEREIN" AFTER "MOVE MILITARY

FORCES WITHIN THE REPUBLIC OF PANAMA". EXPLANATION: IN YOUR AGREED TEXT OF PARAGRAPH 2 YOU HAVE DELETED THIS LANGUAGE FROM THE ORIGINAL U.S. TEXT AT TWO PLACES. WE ARE PREPARED TO COMPROMISE AND LEAVE IT OUT THE SECOND TIME IT APPEARS, BUT REGARD IT AS VERY IMPORTANT TO RETAIN IT WHERE IT FIRST APPEARS. PURPOSE OF RETAINING THE LANGUAGE IS TO HIGHLIGHT THAT U.S. MILITARY FORCES WILL HAVE THE USE OF AREAS AND INSTALLATIONS WITHIN PANAMA. TREATY DOCUMENT ITSELF SHOULD REFLECT THIS WITH SPECIFIC LANGUAGE REFERRING TO SUCH RIGHTS.

Q) ARTICLE V, PARAGRAPH 5: WE WOULD LIKE TEXT TO REMAIN AS IT IS. HOWEVER, IF THIS APPEARS A MAJOR PROBLEM FOR PANAMA, YOU MAY ACCEPT THE CHANGE REQUESTED (SEE PARAGRAPH 3, REFTEL A), WHICH WE WOULD NOT REGARD AS A CHANGE IN SUBSTANCE--WE WOULD TAKE POSITION WITH PANAMA THAT LANGUAGE "TO THE EXTENT POSSIBLE" WAS REGARDED AS UNNECESSARY. YOU SHOULD, IN THE EVENT YOU ACCEPT PANAMA CHANGE, OBTAIN AS TRADE-OFF THE CHANGE WE SEEK DESCRIBED IN SUBPARAGRAPH H ABOVE. IF YOU AGREE TO THE DELETION OF THESE FOUR WORDS, WE REQUEST EDITORIAL MODIFICATION OF REMAINING TEXT BRINGING WORDS "THE UNITED STATES OF AMERICA" TO BEGINNING OF PARAGRAPH. PARAGRAPH WOULD THEN READ AS FOLLOWS: "THE UNITED STATES OF AMERICA WILL, CONSISTENT WITH ITS PRIMARY RESPONSIBILITY FOR THE PROTECTION AND DEFENSE OF THE PANAMA CANAL, ENDEAVOR TO MAINTAIN ETC."

R) ARTICLE VI: O.K.

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S) ARTICLE VII, PARAGRAPH 3, FIRST SENTENCE SHOULD BE MODIFIED BY SUBSTITUTING "THEY" FOR "EITHER OF THEM". EXPLANATION: WE WOULD NOT WANT PANAMA TO DICTATE REQUIREMENT THAT USG FURNISH COMPLETE INFORMATION REGARDING POSSIBLE ENVIRONMENTAL IMPACTS.

T) ARTICLE XV: O.K.

U) ARTICLE XIV, PAGE 49, LINES 1-2: WE WOULD PREFER THAT YOU RETURN TO LANGUAGE OF ORIGINAL U.S. TEXT. WHILE THE DIFFERENCE IN SUBSTANCE BETWEEN ORIGINAL U.S. SENTENCE AND REDRAFT YOU HAVE AGREED TO MAY APPEAR MINOR, THE ORIGINAL U.S. TEXT IS AGREED LANGUAGE APPEARING IN SOFA WHICH SHOULD BE RETAINED TO AVOID ANY POSSIBILITY OF A CONFLICTING INTERPRETATION WHICH MIGHT ARISE IF A DIFFERENT SENTENCE IS USED HERE FROM THE ONE APPEARING IN THE SOFA.

V) ARTICLE XIX, P. 53, PARAGRAPH 1: CHANGE "SERVICES OF" TO "SERVICES OR". EXPLANATION: APPARENTLY A TYPO-

GRAPHICAL ERROR.

W) ARTICLE XIX, PARAGRAPH 2(D) (P. 54, LINE 12):

WE DO NOT CONCUR IN CHANGE OF CERTIFICATE OF "PROFESSIONAL IDENTITY" TO "PROFESSIONAL QUALIFICATION". THESE ARE TWO QUITE DIFFERENT THINGS. PROFESSIONAL IDENTITY ESSENTIALLY NAMES A PERSON, WHEREAS QUALIFICATION, AS WORD IMPLIES, RELATES TO DEGREE OF CAPABILITY OF A PERSON. REQUEST YOU RESTORE ORIGINAL U.S. LANGUAGE.

2. RE PARAGRAPH 4, REFTEL B, REQUEST YOU MAKE FOLLOWING CHANGE: FIRST SENTENCE OF PARAGRAPH 7 SHOULD BE MADE LAST SENTENCE OF PARAGRAPH 2, AND INSERT AT THE BEGINNING CONFIDENTIAL

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OF THIS SENTENCE THE FOLLOWING: "AFTER THE TRANSITION PERIOD,". THE SECOND SENTENCE OF PARAGRAPH 7 WOULD REMAIN AS PARAGRAPH 7. EXPLANATION: THIS IS PRIMARILY AN EDITORIAL CHANGE TO RESOLVE DOUBTS AS TO SUBSTANTIVE MEANING. PHRASE "SUCH PERSONS" HAS UNCLEAR ANTECEDENT IF LOCATED IN PARAGRAPH 7. LOCATION IN PARAGRAPH 2 WITH ADDED LANGUAGE AT BEGINNING OF SENTENCE CLARIFIES THAT NON-DISCRIMINATORY TREATMENT IS GRANTED TO SUBJECT FORMER CANAL ZONE ENTERPRISES IN POST-TRANSITION PERIOD. TO ALIGN LANGUAGE OF SENTENCE TRANSFERRED TO PARAGRAPH 2 WITH REST OF THAT PARAGRAPH, THE WORD "ENTERPRISES" SHOULD BE SUBSTITUTED FOR "BUSINESSES" IN THE SENTENCE. VANCE

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